

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION  
CORPORATION,

Plaintiff-Applicant,

v.

BERNARD L. MADOFF INVESTMENT  
SECURITIES LLC,

Defendant.

Adv. Pro. No. 08-01789 (CGM)

SIPA LIQUIDATION

(Substantively Consolidated)

In re:

BERNARD L. MADOFF,

Debtor.

IRVING H. PICARD, Trustee for the Substantively  
Consolidated SIPA Liquidation of Bernard L. Madoff  
Investment Securities LLC and the Chapter 7 Estate of  
Bernard L. Madoff,

Plaintiff,

v.

MALCOLM SAGE and LYNNE FLORIO,

Defendants.

Adv. Pro. No. 23-01099 (CGM)

**ORDER DENYING IN PART AND GRANTING IN PART  
DEFENDANTS' MOTION TO DISMISS THE COMPLAINT**

Defendants Malcolm Sage and Lynne Florio (collectively, the “Defendants”) filed a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6) and Bankruptcy Rule 7012 (the “Motion to Dismiss,” ECF No. 26) the two counts asserted in the complaint (the “Complaint”) filed against them by plaintiff Irving H. Picard, as trustee (“Trustee”) for the substantively consolidated liquidation of Bernard L. Madoff Investment Securities LLC under the Securities

Investor Protection Act, 15 U.S.C. §§ 78aaa–lll and the substantively consolidated chapter 7 estate of Bernard L. Madoff (the “Complaint,” ECF No. 1).

On August 16, 2023, the Trustee filed his memorandum of law in opposition to the Motion to Dismiss. Opp’n, ECF No. 32. On September 13, 2023, Defendants filed their reply in further support of their Motion to Dismiss. Reply, ECF No. 35. On September 20, 2023, the Court held oral argument on the Motion to Dismiss. Hr’g Tr., ECF No. 43.

The Court considered the Motion to Dismiss, the papers filed in support of and in opposition to the Motion to Dismiss, and the Complaint. On October 3, 2023, the Court issued a memorandum decision denying the Motion to Dismiss as to Count One of the Complaint and granting the Motion to Dismiss as to Count Two of the Complaint (the “Decision,” ECF No. 44).<sup>1</sup>

On October 13, 2023, Defendants submitted a letter-request to convert the Decision to proposed findings of fact and conclusions of law. Defs.’ Letter, ECF No. 45. On October 17, 2023, the Trustee submitted (i) a letter in response to Defendants’ letter-request (Trustee Letter, ECF No. 50); and (ii) a proposed order implementing the Decision on presentment. Not. of Presentment, ECF No. 48. On November 15, 2023, Defendants filed an opposition to the Trustee’s proposed order. Opp’n, ECF No. 54. On November 29, 2023, the Court held oral argument on Defendants’ letter-request and the Trustee’s proposed order. Amend. Not. of Hr’g, ECF No. 59.

The Court considered the letter-request, the Trustee’s letter response, the Trustee’s proposed order, and Defendants’ opposition to the Trustee’s proposed order. On November 29, 2023, the Court denied Defendants’ letter-request at oral argument.

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<sup>1</sup> On November 30, 2023, the Court issued an Errata Order correcting paragraph 3 of its Decision. Errata Order, ECF No. 62.

Accordingly, it is hereby **ORDERED** that:

1. Pursuant to the Decision, Count Two is dismissed.
2. In all other respects, the Motion to Dismiss the Complaint is denied.
3. Defendants shall file their answer(s) to the Complaint within 21 days of entry of this Order.

**Dated: December 5, 2023**  
**Poughkeepsie, New York**



**/s/ Cecelia G. Morris**

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**Hon. Cecelia G. Morris**  
**U.S. Bankruptcy Judge**